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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 11, 1994

via Hand Delivery

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

**Re: Comments of Metrocall, Inc.
 CC Docket No. 94-46
 RM 8367**

Dear Mr. Caton:

Transmitted herewith, on behalf of Metrocall, Inc., please find the original and five (5) copies of its Comments in the above-referenced proceeding.

If you have any questions or require additional information concerning this matter, please do not hesitate to call.

Sincerely,

Frederick M. Joyce

FMJ/id

enc.

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JUN 11 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 22 of the) CC Docket No. 94-46
Commission's Rules to Delete) RM 8367
Section 22.119 and Permit the)
Concurrent Use of Transmitters in)
Common Carrier and Non-Common)
Carrier Services.)

To: The Commission

COMMENTS OF METROCALL, INC.

Metrocall, Inc. ("Metrocall"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits these Comments in response to the Notice of Proposed Rule Making and Order ("Notice") adopted by the Commission in the above-referenced proceeding.¹

I. Statement of Interest.

Metrocall has long been authorized to provide RCC paging services pursuant to Part 22 of the Commission's Rules. Metrocall currently provides wide-area paging services to over 260,000 subscribers at various locations throughout the United States, and continues to expand its RCC paging services in order to meet the growing public demand for rapid, efficient, and reasonably-priced one-way signalling services.

Metrocall's currently-authorized RCC service areas are primarily located along the East and West Coasts of the United States. In recent years, due to subscriber demand, Metrocall sought, and obtained Private Carrier Paging ("PCP") licenses for

¹ Notice of Proposed Rule Making and Order, CC Docket No. 94-46, FCC 94-113 (released June 9, 1994).

locations throughout the United States. Metrocall has constructed many of the PCP facilities for which it has been authorized, and seeks to expeditiously place additional PCP stations in operation. Metrocall already provides nationwide PCP services, and is expanding its service coverage into areas where it already owns RCC transmitters.

In many locations, due to obvious economy of scale benefits, Metrocall's PCP transmitters are licensed at the same sites at which Metrocall's operating RCC transmitters are located. Because it has been Metrocall's practice to utilize state-of-the-art equipment in constructing its RCC facilities, many of Metrocall's RCC transmitters have sufficient excess capacity to handle early anticipated demands for its PCP services.

Due to these factors, Metrocall requested a waiver of Section 22.119 of the Commission's Rules to allow it to utilize the same transmitters for both RCC and PCP services. See Request for Waiver, Metrocall, Inc. (the "Metrocall Waiver Request") (filed November 30, 1993). The Notice granted Metrocall's Waiver Request, conditioned upon the outcome of this rule making proceeding. See Notice at ¶ 19. Adoption of the proposed Rules would permit Metrocall to achieve the same economies obtained through its Waiver Request on a permanent basis. Metrocall is thus uniquely interested in the outcome of this proceeding, and its experience as a provider of both RCC and PCP paging services renders Metrocall well-qualified to comment upon the proposals contained in the Notice. Thus, Metrocall has standing as a party

in interest to file formal comments in this proceeding.

II. Summary of the Notice.

In its Notice, the Commission observed that the probable rationale for the Section 22.119 prohibition on joint use of transmitters for RCC and non-common carrier use was to protect subscribers from unnecessary delays and interruptions in service. See Notice at ¶ 2. The Commission further observed that several developments make reevaluation of Section 22.119 appropriate. Id. at ¶ 3.

The Notice cited several factors which favor reevaluation of Section 22.119. Specifically, the Commission noted that technological advances and the competitiveness of the paging industry will ensure adequate customer service, and reduce the need for dedicated transmitters to ensure quality of service. Id. at ¶¶ 3, 6. The Commission also observed that many RCC licensees have begun developing regional or nation-wide PCP networks in response to customer demand; substantial economies would result from joint use of transmitters. Id. at ¶ 4. Additionally, the Commission noted that the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act")² amended the Communications Act of 1934 (the "Act") to specify a single "commercial mobile radio service" ("CMRS"); rule making proceedings are underway to conform the regulation of CMRS services subject to Part 22 and Part 90 of the Rules. Id. at ¶ 5.

² Pub. L. No. 103-66, 107 Stat. 312 (1993).

In light of these developments, the Notice tentatively concluded that permitting a single transmitter to operate on both RCC and PCP channels will not disrupt or impair service to subscribers; however, it sought comment upon whether the circumstances in which such joint use is allowed should be limited. Id. at ¶ 7.

**III. Recent Regulatory Changes Justify
the Deletion of Section 22.119.**

Metrocall supports the Commission's tentative conclusion to permit joint use of transmitters for RCC and PCP services, and urges the Commission to delete Section 22.119 in its entirety. In the new regulatory environment created by the Budget Act, Section 22.19 no longer makes sense.

Metrocall also respectfully submits that the reasons supporting deletion of Section 22.119 also support the deletion of Section 90.415(b) of the Rules, which prohibits rendering a common carrier service on stations licensed under Part 90. Metrocall therefore respectfully requests that the Commission delete Section 90.415(b) as well. To the extent that the Commission considers the deletion of Section 90.415(b) to be beyond the scope of this proceeding, Metrocall respectfully requests that the Commission institute a rule making proceeding to accomplish that objective.

As a practical matter, the Budget Act amendments to the Act will eliminate, after a specified period of time, the distinction between PCP and RCC paging services. By classifying all mobile services which meet the statutory test as common carrier "CMRS,"

this new legislation effectively removes the basis for restrictions on dual service use of transmitters in the PCP and RCC paging services.

The Commission has already determined that common carrier mobile services, including RCC paging, generally meet the statutory definition of CMRS. See Second Report and Order in GN Docket No. 90-252, FCC 94-31, ¶ 102 (released March 7, 1994) ("Second CMRS Order"). Additionally, the Commission has determined that PCP services generally fall within that definition, and will be reclassified as CMRS. Id. at ¶ 96. In its current rule making proceeding to conform the operational, technical and licensing requirements applicable to CMRS providers, the Commission stated that its ultimate intention is to regulate all CMRS paging licensees similarly. See Further Notice of Proposed Rule Making in Gen. Docket No. 93-252, FCC 94-100 at ¶ 128 (adopted April 20, 1994).

Metrocall respectfully submits that retention of Section 22.119 would run counter to the Commission's goals in regulating all CMRS paging providers similarly. Currently, nothing in Part 22 of the Commission's Rules prohibits an RCC paging licensee from utilizing the same transmitter for two or more RCC frequencies. Similarly, nothing in Part 90 of the Rules prohibits the use of a single transmitter for more than one PCP frequency. To prohibit a CMRS licensee from utilizing a single transmitter for two frequencies, simply because of the manner in which those frequencies were formerly classified, will serve no

practical or regulatory purpose. Such an approach may also disadvantage such licensees vis a vis other CMRS providers whose multiple frequency transmitters utilize frequencies which were formerly regulated under the same Rule Part; that result will not foster the Congressional goal of "regulatory symmetry."

**IV. Technical and Economic Factors Support
the Deletion of Section 22.119.**

Metrocall respectfully submits that the technical advances and economic factors cited in the Notice support the deletion of Section 22.119. With the dramatic increases in transmitter capacity in recent years, sufficient airtime is available for both PCP and RCC traffic on existing RCC and PCP transmitters, without causing any degradations in service.

Deletion of Section 22.119 would also allow for the more expeditious institution of service to the public by eliminating the need to construct dedicated PCP and RCC transmitters until additional capacity becomes necessary. Moreover, as the Commission observed in its Notice, the construction of separate PCP or RCC transmitters will impose substantial additional costs upon licensees, and those costs will likely result in higher rates to subscribers. See Notice at ¶ 4.

For example, in its Waiver Request, Metrocall estimated that the costs of constructing separate transmitters at each of its currently-authorized PCP or RCC sites will be approximately \$20,000 to 30,000 per transmitter, with additional, recurring costs of approximately \$500 to \$700 per month for each transmitter site lease. Along with anticipated early losses due

to depreciation and site rents, these additional costs will be reflected in higher rates for PCP and RCC services. See Metrocall Waiver Request at 3. Conversely, Metrocall stated that, if those "start up" costs could be minimized, Metrocall will be able to offer its customers lower, more competitive rates. Id. The deletion of Section 22.119 will allow all providers of both PCP and RCC service to initiate services to the public more rapidly, at lower rates, than is possible under the current Rules.

Metrocall respectfully submits that the Notice's suggestion of limiting joint transmitter use to situations where the RCC and PCP services are different in kind, or where the licensee uses a batched paging function, are unnecessary. As the Commission observed in the Notice, the paging industry has become increasingly competitive; those competitive realities dictate efficient use of available airtime. See Notice at ¶ 6. Section 22.119 is not necessary to ensure that licensees will efficiently build and operate their paging systems.

With regard to requiring licensees making joint RCC-PCP use of transmitter to utilize a batched paging function (or any particular technology), Metrocall believes that the level of competition in the paging industry will sufficiently protect subscribers. Paging customers who experience delays or degradations in service generally have numerous other providers from which to choose; licensees thus have an incentive to ensure the high quality of their services in the absence of regulation.

With regard to requiring licensees' RCC and PCP systems to be different in kind, Metrocall submits that the needs of subscribers, rather than regulation, should determine whether a licensee's RCC and PCP services are both local, regional or national in scope, or whether each of those services is targeted to different geographic areas.

Conclusion

Metrocall supports the Commission's efforts to eliminate the unnecessary and costly burdens placed upon licensees by the Section 22.119 prohibition against joint RCC-PCP use of transmitters, and urges the Commission to adopt its proposal to delete Section 22.199 as well as Section 90.415(b) of the Commission's Rules.

Respectfully submitted,

METROCALL, INC.

By


Frederick M. Joyce
Christine McLaughlin

Its Attorneys

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July 11, 1994

CERTIFICATE OF SERVICE

I, Glenda Sumpter, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 11th day of July, 1994, copies of the foregoing Comments of Metrocall, Inc. were mailed, postage prepaid, to the following:

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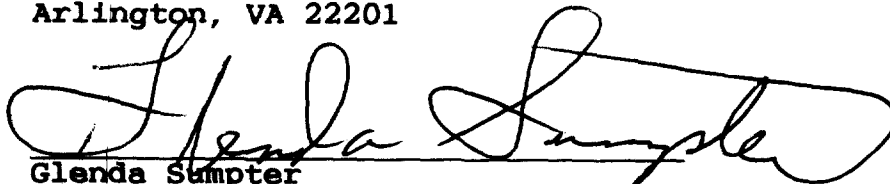
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